Supreme Court, U.S.
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No. 93-1833

IN THE

Supreme Court of the United States

October Term, 1993

CITIZENS FOR TERM LIMITS,
Petitioners,

v.

MARGARET COLONY, LEAGUE OF WOMEN VOTERS OF WASHINGTON, GEORGE CHEEK, JOHN CLUTE, and THOMAS FOLEY;

SUSAN THORSTED, WILLIAM FIRST, and TIMOTHY S. ZENK,
Respondents.

Petition for Writ of Certiorari to the Court of Appeals, Ninth Circuit

RESPONDENTS' JOINT BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

May a state impose term limit qualifications on certain incumbent candidates for the United States Congress without violating the Qualifications Clauses of the Constitution and the First and Fourteenth Amendments?

PARTIES TO THE PROCEEDING

Respondents in this Court were the plaintiffs in two consolidated cases in the U.S. District Court for the Western District of Washington, *Colony v. Munro* and *Thorsted v. Gregoire*.

Respondent League of Women Voters of Washington is a non-profit corporation organized under the laws of Washington. The League has no parent companies or subsidiaries. The League's members are registered voters in every congressional district in the state of Washington.

Respondents Margaret Colony, George Cheek, and John Clute are registered voters and residents of the state of Washington. Thomas Foley is a member of the United States House of Representatives, representing the Fifth Congressional District of Washington.

Respondents Thorsted, First, and Zenk are registered voters and residents of the state of Washington.

The petitioners in this Court are Citizens for Term Limits, a defendant-intervenor in the district court, and Christine Gregoire and Ralph Munro, the state defendants in the lower court. The other parties who defended Washington's Term Limits Law in the court below and are appellants in the Ninth Circuit Court of Appeals are: LIMIT, Sherry Bockwinkel, U.S. Term Limits, Alan M. Gottlieb, Lee Gill and Wilbur B. McPherson.

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OPINION BELOW

The decision of the United States District Court for the Western District of Washington declaring the Washington Term Limits Law unconstitutional is reported at 841 F. Supp. 1068 (1994).

CONSTITUTIONAL AND STATUTORY PROVISIONS

U.S. Constitution, Article I.

U.S. Constitution, Article I, Sections 2 and 3.

U.S. Constitution, Article I, Section 4.

U.S. Constitution, First Amendment.

U.S. Constitution, Fourteenth Amendment.

42 U.S.C. Sections 1983 and 1988.

STATEMENT OF THE CASE

In November 1992, Initiative Measure 573, the Washington Term Limits Law, was enacted. The Term Limits Law bars certain incumbent candidates for the United States Congress from appearing on the primary and general election ballot under any circumstances, bars them from filing a declaration of candidacy, bars them from being nominated by their political party, and bars them from appearing in any voter or candidate pamphlet.

The Term Limits Law bars constitutionally qualified candidates from the ballot with the express purpose and likely effect that they will not be re-elected.

ARGUMENT AND AUTHORITIES

Petitioner Citizens for Term Limits ("CTL")[1] and petitioners Christine Gregoire and Ralph Munro (the "State Defendants")[2] ask this Court to grant certiorari before judgment in the Ninth Circuit Court of Appeals, where appeals from the decision of the Western District of Washington holding Washington's Term Limits Law unconstitutional are pending.[3] This joint response is to both the CTL and State Defendant petitions.

CTL and the State Defendants have filed their petitions to coincide with petitions for writ of certiorari filed by U.S. Term Limits, Inc.[4] and the State of Arkansas[5] seeking review of *U.S. Term Limits v. Hill*, 316 Ark. 251, 872 S.W.2d 349 (1994).

The appropriateness of granting the CTL and State Defendant petitions depends entirely on the action this Court takes on the petitions filed in *Hill*. If this Court denies the *Hill* petition, then it should deny the petitions herein. There is ample ground to deny both petitions. The decision of the Western District in *Thorsted v. Gregoire* (as well as the decision of the Arkansas Supreme Court in *Hill*) is controlled by this Court's decision in *Powell v. McCormack*, 395 U.S. 486 (1969), and is consistent with the decision of every other court to consider the constitutionality of limiting the terms of members of Congress. *See U.S. Term Limits v. Hill*, 316

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[1] *Citizens for Term Limits v. Foley*, Sup. Ct. No. 93-1833.

[2] *Gregoire v. Thorsted*, Sup. Ct. No. _____ (filed June 7, 1994).

[3] *Thorsted v. Gregoire*, 841 F. Supp. 1068 (W.D. Wash 1994), *appeals pending* Nos. 94-35222, 94-35223, 94-35267, 94-35285, 94-35287, 94-35289 (9th Cir. 1994).

[4] *U.S. Term Limits, Inc. v. Thornton*, Sup. Ct. No. 93-1456.

[5] *Arkansas ex rel. Bryant v. Hill*, Sup. Ct. No. 93-1828.

Ark. 251, 872 S.W.2d 349 (1994); *Stumpf v. Lau*, 108 Nev. 826, 839 P.2d 120 (1992).

The constitutionality of state-enacted limits on congressional terms is before the Ninth Circuit in *Thorsted v. Gregoire*; the opinion and analysis of the Ninth Circuit may assist this Court in determining which issues, if any, merit review.

CONCLUSION

There are ample grounds to deny all certiorari petitions arising out of the decisions of the Western District of Washington and the Arkansas Supreme Court declaring the state-enacted term limit laws unconstitutional.

The Court's decision on whether to grant or deny the CTL and State Defendant petitions should be made in tandem with, and should be consistent with, the Court's decision on the Arkansas petitions for certiorari.

DATED June 7, 1994.

Respectfully submitted,

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